

TYSON FETTES
RACINE COUNTY
REGISTER OF DEEDS
Fee Amount: \$30.00
Pages: 12



COVER SHEET
FOR
RECORDATION
OF
HIGHWAY EASEMENT
FROM
^R
SOO LINE RAILROAD COMPANY
to
WISCONSIN DEPARTMENT OF TRANSPORTATION

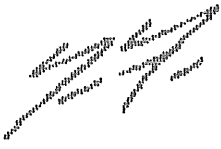
Recording Area

Return to:

Peter Bradley
Railroads & Harbors Section
P.O. Box 7914
Room 701
Madison, WI 53707-7914

30-12

Tax Parcel IDs: 018032125018000 &
151032230033000


TYSON FETTES
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30-11

PUBLIC HIGHWAY EASEMENT No. 43958-01

Wisconsin DOT Project No. 1030-24-20
STH 11 Interchange
Racine County

Date: January 27, 2017.

In consideration of the sum of Forty Thousand and No/100 Dollars (\$40,000.00),

SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as Canadian Pacific, of 120 South Sixth Street, Suite 900, Minneapolis, Minnesota 55402, ("**Grantor**")

hereby grants and conveys unto **STATE OF WISCONSIN** ("**Grantee**"),

an easement ("**Easement**") described and conditioned as follows:

- 1.0 **DESCRIPTION OF EASEMENT AREA:** The Easement is granted over, under, across and through the following parcel of land in **Racine County, Wisconsin** described in **Exhibit A** appended hereto containing 2.50 acres, more or less and hereinafter referred to as the "**Easement Area**."
- 2.0 **PURPOSES:** The Easement shall be limited to:
 - 2.1. The installation, construction, maintenance, repair, replacement, and use of a public highway (the "**Highway**") for public vehicular and pedestrian uses, and any other highway purposes pursuant to Wisconsin law over, under, through and across the Easement Area.
 - 2.2. The installation, construction, maintenance, repair, replacement, and use of State, county or City owned pipes, wires or other State, County or City-

owned utilities (collectively "**Public Utilities**" or individually a "**Public Utility**").

Nothing herein shall be construed to allow a non-government owned utility company to construct, maintain, repair or replace pipes wires or other items upon or across the Easement Area.

3.0 **RESERVATIONS:**

Grantor reserves:

- A. fee title to the Easement Area to itself; Grantee's maintenance and use of the Easement Area, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this Easement;
- B. the right to permit other parties to use the Easement Area in a manner that does not interfere with the Grantee's use of the Easement Area for highway purposes pursuant to Wisconsin law and pursuant to this Easement;
- C. the right of incidental use of the Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Easement Area for highway purposes pursuant to Wisconsin law and pursuant to this Easement; and
- D. the right and privilege to use the Easement Area for any and all other purposes that are not inconsistent with Wisconsin law as it relates to state highway purposes or with the use thereof for the purpose or purposes permitted by this Easement or which do not unreasonably interfere with or restricts the rights granted to Grantee.

4.0 **TERM, TERMINATION AND EXPIRATION:**

- 4.1 This Easement shall remain in effect so long as required by Grantee for Highway or Public Utility purposes. The Easement shall only terminate if the Highway is discontinued or abandoned pursuant to Wisconsin law.
- 4.2 Upon termination or expiration of this Easement pursuant to Section 4.1, Grantee shall, at its sole expense, promptly remove the Highway from the Easement Area and restore the Easement Area to substantially its former state.

5.0 HIGHWAY CONSTRUCTION, MAINTENANCE AND REMOVAL WORK:

The provisions of this Section 5 shall apply to the extent the provisions of this Section 5 are not included in a separate written agreement between the parties.

5.1 Division of Responsibility: Grantee shall be responsible, at its cost and expense, for all work necessary to install, construct, maintain, repair, replace and remove the Highway.

5.2 Highway and Public Utility work by Grantee:

5.2.1 Grantee, shall comply with Wisconsin law and take all necessary steps for the construction, maintenance, operation or removal of the Highway or Public Utilities from or in the Easement Area.

5.2.2 Grantor makes no representation by the granting of this indenture that the Easement Area is free of any such pipes, wires, conduits, sewers, pilings or other obstructions.

Prior to any construction, maintenance or removal of the Highway or Public Utilities, Grantee shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions to the construction of the Highway. Grantee expressly assumes the risk of damage to the foregoing pipes, wires, conduits, sewers, piling or other obstructions, if any, and agrees to pay any claims arising from damage thereto in connection with the construction or maintenance of the Highway.

5.2.3 Prior to the commencement of work, the Grantee shall require any third party contractor acting on behalf of the Grantee pursuant to this Easement to:

5.2.3.1 to the extent permitted by law, execute and deliver to the Grantor a release of liability that shall provide that the contractor shall indemnify, hold harmless and defend the Indemnitees (as defined below) from and against all claims arising out of, resulting from or relating to any loss of (or damage to) any property or business or any injury to (or death of) any person, where such loss, damage, injury, or death actually or allegedly arises (whether directly or indirectly, wholly or in part) from any negligence or willful misconduct of the Contractor (or its employees, agents, or contractors) while on the Easement Area pursuant to this Easement. Indemnitees means Grantor, its subsidiaries, affiliated companies and parent companies, and their directors, officers, employees and agents, including without limitation, Soo Line Railroad Company, Delaware and Hudson Railroad Corporation, Dakota, Minnesota and Eastern Railroad Corporation, Soo Line Corporation, Wyoming, Dakota Railroad Properties, Inc., The Milwaukee Motor Transportation Company,

Hiawatha Transfer Company, and Canadian and Pacific Railway Company. In no event will the Grantee be required to indemnify, hold harmless and defend the Indemnitees (as defined above) from and against any claim whatsoever.

5.2.3.2 maintain during any period of time that any of its employees or agents or equipment are upon the Property, policies of insurance with initial limits of coverage shown in brackets "[]" as follows:

- a) Worker's Compensation Insurance which fully meets the requirements of any Workers' Compensation law in force in Wisconsin, including the requirements of any Occupational Disease Law.
- b) Business Automobile Coverage Insurance covering all owned, non-owned and hired vehicles engaged in or on the Easement Area, with a combined single limit of \$[1,000,000.]
- c) Commercial General Liability insurance with a combined single limit of \$[2,000,000].

5.2.4 The above policies of insurance shall further be subject to the following:

5.2.4.1 The coverage limits of the foregoing policies shall be initially as shown in brackets, but such amounts shall after one year from the date hereof be such amounts as Grantor reasonably deems standard for the work proposed to be done.

5.2.4.2 Each such insurance policy shall name the Grantor as an additional Insured. Prior to commencement of any work upon the Easement Area, the Grantor must receive and approve a certificate or certificates of insurance for each such insurance policy stating that such coverage will not be canceled or materially changed without ten (10) days written notice being given to the Grantor. The certificate for the Commercial General Liability Policy of insurance shall include the following endorsement:

"It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work to be performed in connection with the Highway as set forth in the easement grant dated _____, 20__ by Soo Line Railroad Company to the State of Wisconsin, including work upon railroad property.

6.0 **TAXES AND ASSESSMENTS:** Grantee shall assume and pay any taxes or assessments which may be levied by any competent authority by reason of the existence or use of said land for public highway purposes.

7.0 **LIABILITY:**

In consideration for the grant of the Easement, without which it would not be granted, Grantee assumes all risk of damage to or destruction of the Highway or Public Utilities through any cause whatsoever while located upon and across the Easement Area, except as may result from Grantor's willful malicious misconduct. Notwithstanding the foregoing, in no event will the Grantee be required to indemnify, hold harmless and defend the Indemnitees (as defined above) from and against any claim whatsoever.

8.0 **ENVIRONMENTAL:**

8.1 As used in this Section, the following terms have the following definitions:

8.1.1 **"Claim"** or **"Claims"** means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultants' fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);

8.1.2 **"Environmental Law"** or **"Environmental Laws"** means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted;

8.1.3 **"Hazardous Substance"** or **"Hazardous Substances"** means any petroleum product, distillate, or fraction, radioactive material, chemical known to the Federal Government or the State of Wisconsin to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by an Environmental Law of the United States or the State of Wisconsin including but not limited to Federal or Wisconsin hazardous waste laws;

8.1.4 **"Release"** or **"Released"** means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping,

leaching, dumping, disposing or spreading of any Hazardous Substance into the environment, as "Environment" is defined in CERCLA;

8.1.5 **"Response"** or **"Respond"** means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance;

8.1.6 **"Use"** means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon a Hazardous Substance.

8.2 The Grantee:

8.2.1 shall be familiar with the requirements of, comply with, and secure at the Grantee's own expense any permits or licenses required by, all applicable laws, regulations, ordinances, and standards, including without limitation all Environmental Laws;

8.2.2 shall, upon written request by the Grantor (but only in such circumstances where Grantor has reasonably reliable information that the Easement Area has been contaminated by the Release of Hazardous Substance), provide the Grantor with the results of appropriate reports and tests from a qualified engineer to demonstrate that the Grantee has complied with all Environmental Laws relating to the Easement Area;

8.2.3 shall not in any manner cause or allow the Easement Area to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Easement Area within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or any similar state statute or local ordinance;

8.2.4 shall not, without prior written disclosure to and approval by the Grantor, Use or authorize the Use of any Hazardous Substance on the Easement Area, except for the storage and transportation of roofing shingles and other incidental and associated uses and such other utilization as may be in accordance with Environmental Laws;

8.2.5 shall not cause or allow the Release of any Hazardous Substance on, to, or from the Easement Area;

8.2.6 shall promptly notify the Grantor of any actual or suspected Release of any Hazardous Substance, but only upon reasonable notice to Grantee of such

Release, on, to, or from the Easement Area, regardless of the cause of the Release;

8.2.7 shall promptly provide the Grantor with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, concerning any Release of a Hazardous Substance on, to or from the Easement Area, or any alleged violation of or responsibility under any Environmental Law relating to the Easement Area; and

8.2.8 shall promptly take all necessary action in Response to any Release or Use of a Hazardous Substance by Grantee at the Easement Area that gives rise to any liability, claim, cause of action, obligation, demand, fine, penalty, loss, judgment or expense under any Environmental Law, or causes a significant public health or workplace effect, or creates a nuisance.

8.2.9 To the extent permitted by Wisconsin law, by accepting delivery of this Temporary Easement, the Wisconsin Department of Transportation covenants and agrees not to sue Grantor or its respective directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, grantors or anyone acting on its behalf or their behalf with respect to any Claims (including without limitation all Claims arising under any Environmental Law), existing and contingent, known and unknown, that Grantee had, has or may have, whether arising at common law, in equity, or under a federal, state or local statute, rule or regulation, arising out of, resulting from, or relating to the condition of the Property. The foregoing shall apply to any condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property, regardless of whether the foregoing condition of the Property was caused in whole or in part by the Grantor's actions or inactions.

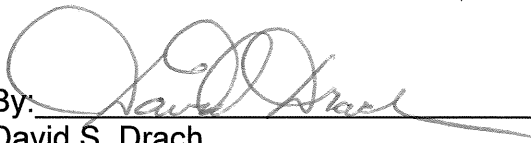
9.0 **MISCELLANEOUS:**

- 9.1 **Grantee/Grantor:** As used in this Easement, the terms “**Grantee**” and “**Grantor**” shall include the parties first named above and their respective successors or assigns.
- 9.2 **Headings:** The paragraph headings used in this Easement are used solely for the purpose of convenience. They are not intended to, and do not, modify or limit the wording of the paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.
- 9.3 **Severability of Terms:** Each provision, paragraph, sentence, clause, phrase, and word of this Easement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision, paragraph, sentence, clause, phrase or word of this indenture is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Easement.
- 9.4 **No Waiver:** Any act or omission constituting a breach of this Easement shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof;
- 9.5 **Notices:** Any notice given by a party pursuant to this Easement, shall be good if served upon the other party, or if deposited in a United States post office, certified mail, addressed to the other party at its last known address.
- 9.6 **Entire Agreement:** This Easement constitutes the entire agreement of the parties concerning the rights, responsibilities, and obligations of the parties hereto, and supersedes any and all prior agreements or oral understandings between the parties with respect thereto. Any modification to the terms of this Easement shall be in the form of a duly-executed addendum or supplement to this Easement
- 9.7 **No Warranty:** Grantor does not warrant title to the Easement Area, and makes no representations or warranties, express or implied, as to the habitability of the Easement Area or the fitness of the Easement Area for Grantee’s purpose or any other particular purpose.
- 9.8 **Choice of Law:** This Easement shall be governed and construed in accordance with the laws of Wisconsin, excluding Wisconsin’s choice-of-law principles, and all claims relating to or arising out of this Easement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of Wisconsin, Excluding Wisconsin’s choice-of-law principles.

9.9 Prior Appropriation: To the extent this Easement imposes obligations on Grantee that require the expenditure of funds by Grantee, such obligations are contingent upon and subject to the Wisconsin Legislature appropriating funds for such obligations. If there is no appropriation of funding for all or part of any such obligation, Grantee shall make a good faith effort to secure funding to cover the obligation.

This Easement shall inure to the benefit of and be binding upon the successors and assigns of the Grantor and the Grantee.

SOO LINE RAILROAD COMPANY
doing business as Canadian Pacific

By: 
David S. Drach
Its: Director Real Estate - U.S.

STATE OF MINNESOTA)
) ss:
COUNTY OF HENNEPIN)

The foregoing easement was acknowledged before me this 27th day of January, 2017, by David S. Drach, Director Real Estate - U.S., of Soo Line Railroad Company, a corporation under the laws of the State of Minnesota, on behalf of the corporation.

Notary Seal


Notary Public

This instrument was drafted by:
Real Estate Department
Canadian Pacific
900 Canadian Pacific Plaza
120 South Sixth Street
Minneapolis, Minnesota 55402

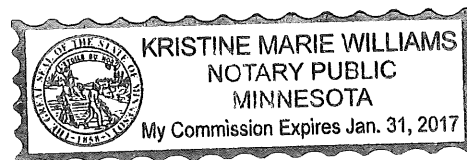


EXHIBIT A

The Easement shall encompass the following parcels:

1. Parcel 8 of Transportation Project Plat 1030-24-20 - 4.02, recorded in Volume 1 of Transportation Project Plats, Page 97, as Document 2240907, recorded in Racine County, Wisconsin.
Containing 0.593 acres

An **Easement for Highway Purposes (HE)**, as long as so used, includes the right to preserve, protect, remove or plant thereon any vegetation that the highway authorities may deem necessary or desirable.

2. Parcel 8 of Transportation Project Plat 1030-24-20 - 4.03, recorded in Volume 1 of Transportation Project Plats, Page 98, as Document 2240908, recorded in Racine County, Wisconsin.
Containing 0.432 acres

An **Easement for Highway Purposes (HE)**, as long as so used, includes the right to preserve, protect, remove or plant thereon any vegetation that the highway authorities may deem necessary or desirable.

3. Parcel 8 of Transportation Project Plat 1030-24-20 - 4.05 Amendment No: 1, recorded in Volume 1 of Transportation Project Plats, Page 201, as Document 2294370, recorded in Racine County, Wisconsin.
Containing 1.249 acres

An **Easement for Highway Purposes (HE)**, as long as so used, includes the right to preserve, protect, remove or plant thereon any vegetation that the highway authorities may deem necessary or desirable.

4. Parcel 8 of Transportation Project Plat 1030-24-20 - 4.06 Amendment No: 1, recorded in Volume 1 of Transportation Project Plats, Page 202, as Document 2294371, recorded in Racine County, Wisconsin.
Containing 0.226 acres

An **Easement for Highway Purposes (HE)**, as long as so used, includes the right to preserve, protect, remove or plant thereon any vegetation that the highway authorities may deem necessary or desirable.